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—————2:15-cv-01045-RFB-PAL—————

1   UNITED STATES DISTRICT COURT

2   DISTRICT OF NEVADA

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4 CUNG LE, et al.,   )
)
5   Plaintiffs,   ) Case No. 2:15-cv-01045-RFB-PAL
)
6   vs.   ) Las Vegas, Nevada
) Monday, August 26, 2019
7 ZUFFA, LLC, d/b/a Ultimate   ) 9:43 a.m.
   Fighting Championship and   )
8 UFC,   ) EVIDENTIARY HEARING, DAY ONE
)
9   Defendants.
   _____

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13   REPORTER'S TRANSCRIPT OF PROCEEDINGS

14   THE HONORABLE RICHARD F. BOULWARE, II,
              UNITED STATES DISTRICT JUDGE

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19 APPEARANCES: See Pages 2 and 3

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   COURT REPORTER: Patricia L. Ganci, RMR, CRR
22   United States District Court
                     333 Las Vegas Boulevard South, Room 1334
23   Las Vegas, Nevada 89101

24
   Proceedings reported by machine shorthand, transcript produced
25 by computer-aided transcription.

              PATRICIA L. GANCI, RMR, CRR - (702) 385-0670

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1 | to save that --

2 | MR. CRAMER: Okay.

3 | THE COURT: -- for actual rebuttal from Dr. Singer. So

4 | if you have nothing else, because I don't want this to eat up

5 | the time, I'd like to turn this over to opposing counsel to

6 | begin their cross-examination.

7 | MR. CRAMER: Your Honor, the one main thing we haven't

8 | covered -- we've covered now the impact regression and how it

9 | showed a falling wage share. We haven't yet gotten to common

10 | impact, how it was spread across the class, and a discussion of

11 | how he used his regression and other analyses to explain common

12 | impact. I think that's important and --

13 | THE COURT: I think it's important, too. But, again,

14 | when we're going passed some of the time limits and I get

15 | concerned. I will tell counsel, too. We have to end at

16 | 4 o'clock today for technology reasons related to us having to

17 | shut our system down, and we're going to start a little bit

18 | earlier tomorrow. But why don't you get right to that,

19 | Mr. Cramer, and I'll give you 20 minutes. Then I'm going to

20 | turn this over to opposing counsel.

21 | BY MR. CRAMER:

22 | Q. Okay. Dr. Singer, can describe your two main methods of

23 | showing that the challenged conduct had a widespread effect

24 | across the class?

25 | A. All right. I used two methods. The first method is that

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1   I -- once I have a model that's fit to the data, I can go back

2   and make individual predictions for each fighter and then

3   compare what the fighter was paid per my model in the but-for

4   world to what the fighter was actually paid. And if there was

5   an underpayment, I can determine that that fighter suffered

6   impact.

7   The second method, which I call the pay structure

8   method, begins with the same regression impact model, but then

9   looks for proof both in the record and my own original

10 empiricism, which suggests a pay structure binds the payment of

11 all of the fighters together through some knowable objective

12 factors.

13   THE COURT: Like a pay scale.

14   THE WITNESS: Like a pay scale.

15 BY MR. CRAMER:

16 Q. All right. Before we get to the pay scale, can you

17 describe -- so is your model capable, your regression model,

18 capable of showing impact to all or nearly all class members?

19 A. Yes.

20 Q. What does -- what is -- what are the results of your

21 regression model in terms of showing impact to all or nearly all

22 class members? What does it show?

23 A. So when I take -- when I take the model after it's fit and I

24 go and predict for each fighter what their but-for payments

25 would have been and compare it to their actual payments, I find

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1 that between 98.5 and 99.1 of class members suffered antitrust

2 injury.

3 Q. And there are a handful of class members, 12, that did not

4 suffer injury at least according to that model? Or your model

5 doesn't find suffered injury. Does that undermine your model?

6 A. It doesn't undermine my model, no.

7 Q. Okay. Did you devise this method of using a regression

8 analysis to show common impact across a class yourself or is

9 that a standard method?

10 A. It's a standard method. And I'm aware of cases in which

11 it's been used and accepted by courts.

12 Q. Zuffa accuses you of using average foreclosure rates instead

13 of computing individual foreclosure shares for each fighter.

14 Does this criticism make sense in the context of your common

15 impact analysis?

16 A. There's no such thing as an individual foreclosure share.

17 So I have a hard time following that one.

18 Q. All right. Let's talk now about your second method. So

19 that's your first method. It uses the regression to show common

20 impact. Now, does the second stand on its own independent

21 method -- and you mentioned that it involves a pay structure.

22 By pay structure do you mean some kind of formal rigid salary

23 scale or something else?

24 A. Something else.

25 Q. And what do you mean?

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1 A.   What I mean is that there are knowable objective factors

2 that explain differences in payments across employees of a firm

3 or in this case across something closer to an independent

4 contractors within a firm.

5   THE COURT: Such as for a fighter, their ranking?

6   THE WITNESS: Exactly.

7   THE COURT: Or their weight class?

8   THE WITNESS: Exactly. So it suggests that comparably

9 -- comparable employees with comparable experience and

10 comparable tenure and comparable skills would be paid comparable

11 amounts.

12 BY MR. CRAMER:

13 Q. Did you prepare a slide with some record evidence showing

14 that Zuffa believed they had some kind of basic formula for

15 compensation?

16   THE COURT: So, Mr. Cramer, you don't need to have

17 Dr. Singer go through all the summary of the actual records

18 regarding Zuffa employees making references to pay scales and

19 pay structures. If you want to go through his analysis as it

20 relates to analyzing the sort of common proportional movement of

21 the wages up or down, fine. Let's do that. But I don't need

22 Dr. Singer to review for me, you know, comments from the various

23 match makers at UFC about what their scale was and how they

24 tried to keep pay equity. That's what Mr. Silva's testimony is

25 for. And I know he does that already, Dr. Singer, in his actual

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 1   report anyway. But I don't think that would be beneficial. So

 2   if you are talking about what's statistical work he does --

 3   MR. CRAMER: Okay.

 4   THE COURT: -- in relation to that, which he does do

 5   separate from the pay scale, let's move to that.

 6   MR. CRAMER: Fair enough.

 7   BY MR. CRAMER:

 8   Q. What empirical analyses did you do to confirm that there was

 9   some -- at least an informal pay structure that bound the

10   salaries of the compensation of fighters together?

11   A. I did two. In the first approach I identified these

12   knowable objective factors such as Pay-Per-View, such as the

13   fighter's rank, the weight class, the gender. And I was able to

14   show that these knowable objective factors were highly

15   predictive in what a fighter got paid. That suggests again the

16   existence of a pay structure.

17   The second approach was at any point in time I

18   regressed what an individual fighter made on what all other

19   fighters were making at the same time. And it turned out

20   knowing what everyone else was making did a very good job in

21   predicting what an individual fighter made as well.

22   Q. All right.

23   Did Dr. Topel conduct an analysis in his reports, a

24   statistical analysis, that you believe confirm a price

25   structure?